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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 34th MEETING
(FIRST PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 19 February 1992, at 3 p.m.

Chairman: Mr. SOLT (Hungary)

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(a) Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms

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* The summary record of the second part of the meeting appears as document E/CN.4/1992/SR.34/Add.1.

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The meeting was called to order at 3.15 p.m.

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:

(a) ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

(b) NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

(c) COORDINATING ROLE OF THE CENTRE FOR HUMAN RIGHTS WITHIN THE UNITED NATIONS BODIES AND MACHINERY FOR DEALING WITH THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (agenda item 11) (continued)

(E/CN.4/1992/21 and Add.1; E/CN.4/1992/22; E/CN.4/1992/23; E/CN.4/1992/24; E/CN.4/1992/43 and Add.1 and 2; E/CN.4/1992/58; E/CN.4/1992/73; E/CN.4/1992/NGO/1; E/CN.4/1992/NGO/21)

1. Mr. SEZGIN (Observer for Turkey) said that although the system for the protection and promotion of human rights and fundamental freedoms created by the international community had much to recommend it, it was obviously incapable of preventing violations, which persisted throughout the world. There was, in point of fact, an obvious contradiction between the importance at present accorded fundamental principles at the international level and the violations and threats to which they were exposed in practice. That inevitably raised the question of the effectiveness of the approach used at the present time to protect and promote human rights and fundamental freedoms.

2. Most of the violations recorded were committed in crisis situations that pitted Government security forces against armed groups which had adopted violence as a way of attaining their objectives, either ethnic or ideological. Terrorism, which was practised by virtually all such groups, violated elementary rights and threatened human rights and fundamental freedoms. Although that did not justify violations by persons who possessed legitimate powers of coercion and who were therefore primarily responsible for the protection and promotion of such rights, it was obvious that, by concentrating solely on allegations of violations attributable to States, the present human rights system would have the end result of exacerbating and prolonging conflicts in so far as armed groups regarded themselves as more free and even encouraged in their struggle. Paradoxically, the human rights situation in the country concerned became worse.

3. A peaceful and lasting solution, even through dialogue, could not be found to an ethnic or ideological conflict that had degenerated into an armed struggle if the State concerned did not have a representative Government capable of taking a decision of that importance on behalf of its citizens. In any event, no terrorist group could participate in a peace process before it had laid down its arms. Democratization should precede the peaceful settlement of the conflict, but armed struggle must cease before the democratic process could begin. As had already been emphasized in the Commission by several speakers, including the Under-Secretary-General of

the United Nations, the Secretary of State for Humanitarian Affairs of the French Government, the Indian Ambassador and the United States Ambassador, democracy was the only element capable of giving full rein to human rights and fundamental freedoms, since it enabled political or other minorities, namely, all opposition groups in general, to realize their rights by legal means.

4. His Government therefore called upon the Commission to attach greater importance to the concept of democratization by considering the possibility of establishing machinery designed to promote the introduction and development of democracy in member countries desiring such assistance. Its approach could be based on the method adopted by the Conference on Security and Cooperation in Europe. Technical and financial assistance to third world countries would thus supplement the commendable but inadequate activities of the Centre for Human Rights, that approach being in complete conformity with the United Nations General Assembly resolutions on the subject, and specifically resolution 40/61. His delegation also suggested that terrorism and attempted violations by terrorist groups of human rights and fundamental freedoms within the meaning of article 30 of the Universal Declaration should also be taken into consideration in discussions of human rights violations in a given country within the framework of the United Nations human rights system.

5. Moreover, even if international problems of an essentially political nature also had a human rights aspect, undue politicization of the Commission's agenda complicated an already very difficult task. In the view of his delegation, a way must in future be found of depoliticizing its agenda and referring political problems and the human rights problems that they raised to the competent bodies of the United Nations system.

6. Mr. KEDZIA (Observer for Poland) said that the Commission should adopt a position concerning the impact of AIDS on human rights. His delegation, together with other delegations of members of the Commission, intended to submit a draft resolution entitled "Discrimination against people infected with the human immuno-deficiency virus (HIV) or with the acquired immuno-deficiency syndrome (AIDS)", the text of which would be distributed in due course. The draft emphasized the need to prevent any kind of discrimination resulting from the AIDS pandemic. Persons infected by HIV aroused social fears and various other emotional reactions, and it was therefore for Governments to ensure that their rights were respected. The draft resolution appealed for a spirit of solidarity, compassion and tolerance, and reminded all States of their obligation to ensure the full enjoyment of human rights by persons with HIV or AIDS, their families and those associated with them, and that they should refrain from any discriminatory action or stigmatization. The draft referred particularly to women, children and other vulnerable groups and called upon human rights treaty bodies and bodies of a similar nature "to give full attention to monitoring States parties' compliance with their commitments under the relevant human rights instruments regarding the rights of people infected with HIV or AIDS [...] or people presumed to be at risk of infection". Lastly, the draft expressed support for the preparation by Mr. Varela Quiros, Special Rapporteur of the Sub-Commission, of reports on problems and causes of discrimination against HIV-infected people or people with AIDS.

7. His delegation congratulated the Austrian delegation on its proposal for an emergency intervention procedure to protect human rights in certain crisis situations, for it appeared to satisfy current requirements even though it could be improved. Existing human rights protection machinery suffered from obvious shortcomings. For example, the Commission could in theory defer to its subsequent session consideration of a case even if it involved gross and flagrant violations of human rights. From the standpoint of the victims, however, it was inadmissible that it should lack effective machinery enabling it to take immediate action. In certain situations waiting meant failure. It appeared that the Economic and Social Council had borne such considerations in mind in adopting resolution 1990/48 on the "enlargement of the Commission on Human Rights and the further promotion of human rights and fundamental freedoms", which authorized the Commission to meet exceptionally between its regular sessions provided that the majority of States members of the Commission so agreed. That rule should, however, be supplemented by procedure making it possible to take action in emergency situations, and in the view of his delegation the Austrian proposal did precisely that. It kept a proper balance between the principles embodied in the Charter of the United Nations concerning State sovereignty and human rights protection, and it was also workable even though it could be improved in certain respects. It could, for example, be pointed out more clearly that the proposed machinery was also intended to help the countries concerned, that the group of experts appointed should, if possible, try to enlist the cooperation of the Governments concerned and, if necessary, offer its good offices. His delegation shared the view expressed two days previously in the Commission by the President of the Swiss Confederation to the effect that the Austrian proposal constituted a serious basis for the discussion of emergency procedure in the framework of the Commission on Human Rights.

8. His delegation once again expressed its support for efforts to modernize the Commission's organization of work and would continue to contribute to them. The social and political changes taking place throughout the world made such modernization indispensable. Informal discussions were proceeding on the restructuring of the agenda and on making better use of the time available. Moreover, recognition of the fact that human rights constituted the basis of the international community implied the strengthening of the United Nations Centre for Human Rights. In paying tribute to the valuable and vital work being done by its staff, it should not be forgotten that the Centre was facing increasingly difficult logistical and financial problems. His delegation considered that, in the discussion on the allocation of resources, the attention accorded the Centre's needs should be proportional to the importance of the tasks entrusted to it. In conclusion, his delegation hoped that the outcome of the World Conference on Human Rights would be fruitful and indicated its intention of contributing to its results.

9. Mr. LAGMARI (Observer for Morocco) noted that the work achieved by the international community through the Commission on Human Rights, assisted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, had made considerable progress possible, particularly as regards the codification of legal norms which were being expanded to cover all categories of persons. So much progress had been made that States parties to various international instruments were confronted by problems connected with

the preparation and submission of reports to various monitoring bodies, and the treaty monitoring bodies themselves were encountering financial difficulties in carrying out their work. An increasingly heavy burden was being shouldered by the Centre for Human Rights. Overlapping and duplication were also evident in the activities of various bodies, so that the Commission should give thought to the rationalization of their work. In so doing, however, it should bear in mind that underdevelopment remained a threat to peace throughout the world, and at the present time constituted the greatest challenge that the international community had to face.

10. Ten years previously Morocco had proposed the organization of a world conference on human rights in order to take stock of what had been done; now his delegation was able to thank Italy for its generous offer to act as host to that conference which, in its view, should study obstacles to the realization of human rights. The establishment of national machinery, whether political, legal, administrative or other, was a precondition for the protection and promotion of human rights. His delegation had been gratified by the holding, in October 1991, of the first international meeting on national institutions for the promotion and protection of human rights, organized by the Centre for Human Rights in cooperation with the French Human Rights Commission. The results of that meeting would be of great value to the World Conference in its work.

11. Considerable progress had been made in Morocco thanks to the assistance of the Human Rights Advisory Council that had been set up in May 1990. The Council's task was to follow closely the development of the human rights situation in the country and to submit suggestions and recommendations to the King with a view to the adoption of appropriate measures. Those suggestions and recommendations had already resulted in the adoption, on 12 July 1991, of draft legislation for the creation of the administrative tribunals in various regions of the Kingdom, in the unaminous adoption of a draft law amending certain articles of the Code of Penal Procedure concerning the period of police custody and pre-trial detention, as well as in measures concerning the royal pardon under which prisoners had been released and the sentences of others reduced. Other recommendations of the Council should result in instituting greater control over pre-trial detention, increasing the staff of the judicial police, improving living conditions in places of detention, according priority to investigations of cases involving pre-trial detention and effecting autopsies in all cases of death during periods of police custody whenever there were indications that such death might have been caused by ill-treatment.

12. Moreover, a new administrative unit had been added to the Ministry of the Interior in January 1991, namely, the Department for Staff Training, Codification and Public Freedoms, which was responsible for ensuring respect for legislation on public freedoms and supervising human rights instruction in training schools for staff responsible for the application of legislation. Lastly, a ministerial committee had been appointed to follow up the application of the recommendations formulated by the Human Rights Advisory Council.

13. Morocco's commitment to human rights had been reaffirmed by His Majesty Hassan II at the summit meeting of heads of State or Government of countries members of the United Nations Security Council on 31 January 1992. The King had stated that human rights constituted a universal concept which brooked neither derogation nor questioning and had quoted the famous words of the second Caliph of Islam, Omar Ibn Al-Kattah who had proclaimed the underlying principle centuries previously, namely, "How can man be enslaved if he was born free?".

14. Mrs. PAL (International Alliance of Women) said that, on the question of ways and means of improving the effective enjoyment of human rights, the experience of the first decade of the AIDS scourge which struck without discrimination had confirmed that respect for human rights was essential not only for the liberty and dignity of the individual concerned but also for public health and the well-being of the community. As noted by the United Kingdom representative, action to prevent discrimination against AIDS sufferers should be part and parcel of public health policies since fear of exclusion masked the extent of the disease, which made efforts to prevent the further spread of HIV more difficult. In his progress report (E/CN.4/Sub.2/1991/10), Mr. Varela Quiros, Special Rapporteur of the Sub-Commission, indicated clearly that discrimination against persons with AIDS took many forms. It could be the result of discriminatory legislation or the practices of public authorities, or yet of the attitude of groups of individuals. It was not only people with AIDS who suffered discrimination but also very often their families and friends.

15. On the other hand, the AIDS pandemic had given rise to unprecedented cooperation between United Nations bodies and non-governmental organizations, as well as new initiatives intended to protect individuals against discrimination or other violations of their rights. In that connection, she noted however that although the General Assembly, the World Health Organization and other bodies had confirmed the commitment of States to combat AIDS-related discrimination, the Commission had not yet adopted any substantive resolution on that important issue, and hoped that that omission would be corrected at the present session.

16. Yet discrimination was not the only consequence of the AIDs pandemic, which raised a number of other issues of concern to the Commission, such as the rights of the disabled or the right of persons to leave and to return to their country. AIDS had served to highlight a number of existing violations of rights which had not always received the attention they deserved. For example, women and other disadvantaged groups who were unable to exercise their rights fully were more vulnerable to the risk of infection. The Commission should therefore give priority to the question of women's rights in the AIDS context, since respect for their rights saved lives. The fact that other United Nations bodies were dealing with women's problems should not inhibit the Commission from protecting their rights. The urgency of protecting their lives in the AIDS context should give renewed impetus to cooperation between the Commission on Human Rights, the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women.

17. Vulnerability to HIV infection was also increased by poverty, and AIDS statistics were beginning to indicate a link between poverty and infection. When living conditions became difficult, men, women and even children might seek solace in drugs or prostitution. The economic recession in many countries was dislocating medical supplies and health care - the situation of children in Romania and of patients in the former USSR being tragic examples.

18. Nor should the social dimensions of the pandemic be overlooked. WHO predicted that by the year 2000, 10 to 15 million children may have been orphaned as a result of AIDS. In the interest of providing better protection of the life and rights of children, who constituted the main vulnerable group, the Commission should seek ways of increasing its cooperation with other international bodies and competent United Nations organs.

19. The protection of individual human rights and dignity were also of major importance in the context of AIDS. In the opinion of WHO and public health experts throughout the world, nothing justified the adoption of public health measures that restricted the rights or freedoms of persons with HIV or AIDS. The Commission had before it the Rights and Humanity Declaration and Charter on HIV and AIDS which set out the norms and principles of ethics and humanity applicable in the context of AIDS and indicated the specific responsibilities of States, professionals and other social institutions. The importance of the role played by self-help organizations of persons directly affected by discrimination and cooperation at all levels was not negligible, however. To sum up, the Commission could encourage States to promote full respect for human rights in the context of the AIDS pandemic by developing an appropriate legal framework, launching public education and awareness campaigns, emancipating disadvantaged social groups both legally and politically, and assisting individuals who felt excluded or needed assistance. Those strategies were essential in order to bridge the gap between the aspirations of human rights texts and the reality of the lives of the many millions of persons affected by AIDS.

20. Mr. MACPHERSON (Friends World Committee for Consultation) said that the Quakers and the World Council of Churches welcomed the Secretary-General's analytical report on internally displaced persons (E/CN.4/1992/23). The Churches, in accordance with their mission, had a long tradition of trying to meet the needs of displaced persons. They had also, like the non-governmental organizations, warmly welcomed the Commission's adoption at its previous session of resolution 1991/25 entitled "Internally displaced persons"; that resolution, sponsored by 18 States, had been adopted without a vote.

21. The majority of internally displaced persons fled their homes for the same reasons as refugees, but because they remained within their own country they were not treated as refugees by the international community. States could not remain indifferent to the fact that a growing number of internally displaced persons might be forced to seek refuge in neighbouring countries. It was therefore in the interest of the international community to tackle the root of the problem and the causes that brought about displacement.

22. The World Council of Churches and the Quakers were deeply concerned by the absence of any United Nations body to guarantee displaced persons international protection. There was a need for better linkage between the

United Nations human rights system and the United Nations bodies responsible for humanitarian relief. The Friends World Committee for Consultation proposed that the Commission should establish a working group consisting of five independent experts to examine the protection needs of internally displaced persons. That working group should submit a comprehensive report, together with its conclusions and recommendations, to the Commission at its next session. The Commission should also consider the question of displaced persons and refugees under a separate agenda item.

23. Mrs. COHEN (Refugee Policy Group) expressed satisfaction that the Commission on Human Rights was dealing with the protection of internally displaced persons, since there were at present more than 20 million persons displaced within the borders of their own countries (13 million in Africa, 5 million in Asia, over 2 million in Europe and 1 million in the Americas).

24. International efforts had so far focused mainly on their relief needs, and although the General Assembly at its last session had created the post of emergency relief coordinator to provide relief and assistance in humanitarian emergencies, his mandate did not include protection needs. In that respect the Commission could play an important role by creating machinery to examine and monitor the human rights situation of internally displaced persons and thereby afford them better protection and physical security.

25. In June 1991 the Refugee Policy Group had convened a meeting in Washington D.C. of 40 experts, comprising representatives of the United Nations and regional organizations, representatives of States, international law experts and members of humanitarian organizations. The report on the work of that Conference was available on request. Participants had expressed the hope that the Commission would create machinery to meet the protection needs of internally displaced persons, to act on an emergency basis and take action when masses of people were displaced. They had also proposed that the United Nations should designate human rights officers to accompany humanitarian relief missions in the field, since that would enable them to evaluate immediate and longer-term protection needs, to recommend how such needs could best be met, and to advise on when conditions were sufficiently safe to warrant the return home of displaced persons.

26. Protection could also be increased by the elaboration of guidelines or principles concerning their human rights. Such principles, drawn from both humanitarian and human rights law, would seek to prohibit (1) policies of deliberate starvation, including obstruction of peoples' ability to produce food; (2) forcible relocations on political, racial, religious or ethnic grounds; and (3) interference with humanitarian access and assistance. The Refugee Policy Group urged the Commission to assume its responsibilities in respect of displaced persons and to respond to the human rights dimension of humanitarian emergencies.

27. Mrs. TOM (Caritas Internationalis) said that Caritas Internationalis, which represented nearly 150 national organizations with a social mission, had joined the Friends World Committee for Consultation and the World Council of Churches in a short written statement on the subject of internally displaced persons (E/CN.4/1992/NGO/1).

28. The Secretary-General's analytical report pursuant to Commission resolution 1991/25 (E/CN.4/1992/23) should have the effect of drawing attention not only to the assistance needs of such persons but also to their need for protection in human rights matters. Since they had not left their country, they did not come under the mandate of the United Nations High Commissioner for Refugees (UNHCR) and remained, at least theoretically, the responsibility of their own Government. Whereas there were approximately 17 million refugees throughout the world, the number of internally displaced persons was estimated at about 24 million, the vast majority being in the developing countries of Asia, Latin America and especially Africa. In some of the affected countries, such persons accounted for well over 10 per cent of the entire population. All too often the State was unable to assume the burden they represented, since funds were lacking and administrative structures were saturated, and lack of protection might oblige them to seek refuge in neighbouring countries.

29. Although the factors causing refugees and displaced persons to flee their homes were often identical, there were as yet no generally accepted international standards applicable to all internally displaced persons or any international body responsible for the protection of their rights. It had even been considered that, in so far as the ultimate concern was the effective enjoyment of basic rights by all persons without discrimination, no distinction should be made between a refugee and an internally displaced person.

30. Some machinery had admittedly been set up during the past few years, often on an ad hoc basis as a result of the efforts of several Governments and agencies as well as individuals. In his important statement two days previously, Mr. René Felber, the President of the Swiss Confederation, was undoubtedly right in emphasizing prevention, but in the meanwhile and until the causes of the problem had been eliminated, the immediate duty was to save lives in accordance with the principle of the shared responsibility of humanity as a whole to which Pope John Paul II had referred on 1 May 1991 in his encyclical Centesimus Annus. What was needed, therefore, was a clear mandate at the international level and machinery to provide protection and assistance to the millions of internally displaced persons.

31. Mr. MARTA (International Work Group for Indigenous Affairs) said he welcomed the Commission's decision, pursuant to its resolution 1991/25, to include in its agenda the problem of internally displaced persons, a topic with which he was familiar and which often concerned indigenous and tribal peoples who had been evicted from their lands. He noted that the problem had three aspects. First, the deliberate displacement of populations by Governments without the consent of the people involved reflected a policy that had been initiated during the Anglo-Boer War in South Africa. Although the "concentration camps" of that time were now called "strategic villages", the policy was the same and, in the absence of any control, led to persistent and flagrant violations of human rights. The international community must therefore deal with that practice as a matter of priority, since it did nothing to solve long-term strategic and economic problems that were invoked by the authorities in justifying that policy.

32. Secondly, people fled their homes in order to escape armed conflict or ethnic strife. It would be desirable for the Commission to appoint a working group or a special rapporteur to deal with the situation of such persons who were often isolated and exploited in the areas to which they had fled and where international bodies found it difficult to assist them.

33. Thirdly, an "early warning system" should be introduced as suggested by Sadruddin Aga Khan, Special Rapporteur on mass exodus and refugee flows; he had also emphasized the need for "preventive diplomacy". People did not leave their homes without strong reasons, and therefore the United Nations system should act at the first signs of trouble, before the situation deteriorated and created regional instability and even conflict between States. The same was true of internally displaced persons. Efforts must therefore be made, individually as well as collectively - namely, in the framework of the Commission - to take the steps required to prevent conflicts, the first sign of which was often the displaced person.

34. Mr. KHADER (International Fellowship of Reconciliation) said he was a Palestinian by birth who had lived for years in Baghdad where he had taught geology. He appealed to the Commission to assist in the enforcement of international humanitarian law which had been seriously violated during the 1991 Gulf War by the allied forces led by the United States. Those legal provisions required that both sides to a conflict should protect civilians.

35. The question was not an academic one for him since a year previously he had lost his wife and four daughters in a United States attack on a civilian air raid shelter in Ameriyya in which his family had taken refuge, being unable to escape to Jordan. His own story was typical of the tragedies experienced by hundreds of thousands of Iraqi civilians. The air raid shelter in question, which was clearly identified as such, was specifically protected under international law by article 62 of Protocol I of the Geneva Conventions. How could the United States, with its advanced military technology, not have known that it was a civilian air raid shelter and not a military base? What were the "acts harmful to the enemy" that, under article 65, could have made that shelter lose its protective status? Why had the occupants of the shelter not been warned of the imminence of the attack and therefore been given time to evacuate it in accordance with the provisions of international law? Why was an international body not investigating the bombing of that shelter as well as all the others? What was the point of international law if there was nobody to monitor compliance? How could the American authorities demand that President Saddam Hussein and other Iraqi leaders should be tried and punished for their violations of international law when they evaded any accountability for their own actions? It would seem that very little progress had been made since the Middle Ages, for the loser was punished by the victor without anyone examining the victor's conduct.

36. He was appealing to the Commission in the hope that it would conduct an investigation of the matter. Indeed, a large number of questions had to be answered if future wars were to be fought with true respect for the lives of civilians. First, in bombing so many civilian structures and neighbourhoods, had the United States really "balanced" the suffering inflicted thereby on civilians and the military importance of its targets, as was required by international humanitarian law? Secondly, had Iraq's modern economic

infrastructure been destroyed because its military value had truly outweighed the terrible impact that its destruction had had on civilians? It was clear that the United States had violated a number of provisions of international humanitarian law. If conflicts were to be regulated and if civilians were no longer to be treated as pawns, the first step would be to apply those provisions. The Commission could begin that process by investigating the violations of international law perpetrated by the victor of the Gulf War, namely, the United States.

37. Mr. WADLOW (World Association for World Federation) said he wished to submit to the Commission the People's Decade of Human Rights Education (1991-2001), an international and non-governmental strategy to which the World Association subscribed. The Commission should support the Decade and, together with the Sub-Commission, pay greater attention to human rights education which should be included in the agenda of the World Conference on Human Rights in 1993. The Decade comprised three main topics, namely, knowledge, cooperation and empowerment. One important aim of the Decade was the widest possible dissemination of knowledge about international human rights as well as the procedures needed to implement and enforce them. The authors of the Universal Declaration of Human Rights had recognized the importance of education by stating in the preamble and body of the Declaration that it was vital to promote and strengthen respect for human rights and fundamental freedoms as well as to promote understanding and tolerance among all nations, racial or religious groups. That knowledge was at the heart of the World Human Rights Information Campaign launched in 1989 by the Commission and United Nations General Assembly. He paid tribute for the information efforts made by the Centre for Human Rights and noted that the task was of such magnitude that it could not be accomplished by isolated efforts.

38. For that reason, the Decade also emphasized cooperation through the establishment of international networks for the production of video and audio programmes. Cooperation was also required for teacher training in an institutional or other framework, for example by using the historical and cultural memory of peoples to send a message of hope, respect, equality and dignity. The countries members of the Commission, the United Nations Secretariat, the non-governmental organizations and the media were all educators in human rights, and were helping to demonstrate that respect for human rights was a serious policy aim and not hypocrisy or political manipulation. Yet some of the mystery surrounding legal issues had to be stripped away if the peoples of the world were to see more clearly the direct relationship between all those efforts and their welfare and dignity.

39. Lastly, empowerment was necessary in order to promote participation, reciprocity and accountability at all levels of society and thereby to strengthen the democratic process. It was in that spirit that the Decade should be supported by all.

40. Mr. TEITELBAUM (American Association of Jurists) noted that United Nations human rights and other activities were jeopardized by a financial shortfall due to delays in the payment of contributions by most Member States; on 31 October 1991 unpaid contributions had totalled US$ 1 billion, which was equivalent to the annual budget of the United Nations. In his annual report for 1991, Mr. Pérez de Cuéllar,

the retiring Secretary-General, had said that contributions of States to the United Nations were minute compared to their military expenditure. The annual United Nations budget was equivalent to the price of 15 F-18 combat aircraft. It was to be hoped that the reforms being introduced by the new Secretary-General would eliminate the reasons invoked by some of the main contributors for allowing that enormous debt to accumulate. In view of the intensification of the problem of racism in a number of countries it was particularly regrettable, for example, that the Committee on the Elimination of Racial Discrimination would be unable to meet in March because it lacked US$ 17,000, or in other words US$ 130 for each State party to the International Convention on the Elimination of All Forms of Racial Discrimination.

41. With a view to giving effect to the proposals made on 4 December 1991 by Mr. Pérez de Cuéllar, the American Association of Jurists suggested that a tax on international arms sales should be introduced, the proceeds being channelled directly into a United Nations account, and that the fund for peace-keeping operations proposed by the retiring Secretary-General should be financed from surplus contributions that certain countries had received from other States for the Gulf War.

42. As regards the rules of the game applicable by United Nations human rights bodies, the universally-applicable peremptory rules of the Charter of the United Nations, the Universal Declaration of Human Rights and the two International Covenants on human rights, as well as in jus cogens, customary law and the concept of the intangible core of human rights should first be clearly identified. The peremptory nature of customary law and jus cogens was explicitly recognized in articles 38 and 53 of the Vienna Treaties of 1969 and 1986. Moreover, Article 38 of the Statute of the International Court of Justice stated that the Court must apply international custom and the general principles of law recognized by civilized nations. The peremptory rules of international law therefore stemmed from a large number of sources. Furthermore, the International Law Commission had indicated that it was not the form of a general rule of international law but rather the specific nature of the subject to which it was applied that could impart it a peremptory nature. The Rector of the University of Fribourg, for his part, had stated at a human rights seminar that the difference between peremptory rules and other rules depended on the importance of such rules and their recognition as such by the international community as a whole. That meant not that each State had, in that respect, a right of veto (which would be inconceivable) but that the rules in question should be recognized by all the main elements of the international community. In other words, it was for the international community as a whole to impose on States the rules which had been invested with that character.

43. Three conclusions of a practical nature could be drawn from what he had said. First, all States should, on the international level, respect peremptory rules applicable to human rights even if they had not subscribed to the instruments in which they were set forth. Secondly, consensus or unanimous acceptance by all States was unnecessary for a rule to become peremptory. Thirdly, the peremptory nature of a rule was not the result of the will of a group of States or even of the majority, but of the main elements of the international community.

44. Objectivity and impartiality constituted another rule of the game. Yet the uninformed reader perusing the documents submitted to the Commission might reach the conclusion that human rights were violated in only one-third of the world. Even though working groups, special rapporteurs and experts sometimes received incomplete information, it was their duty to try to present a complete picture of the situation in question without leaving anything out. Violations of the principle of the independence of the judiciary also occurred in the developed countries, for example, as well as other abuses such as racial discrimination, torture, summary execution, arbitrary detention, involuntary disappearances and infringement of freedom of expression. Lastly, economic, social and cultural rights should be accorded the attention they deserved, but not to the detriment of civil and political rights in the name of the principle of the indivisibility of all rights.

45. In view of the growing workload of the Centre for Human Rights, steps should be taken to increase its budget which, at the present time, accounted for only 1 per cent of the total United Nations budget, to improve its management and to increase its staff by recommending that vacant posts should be filled. With regard to recruitment, respect for the provisions of Article 100 of the Charter of the United Nations on the independence of staff members should be restored and staff receiving remuneration from Member States - which had the effect of increasing geographical imbalance in violation of Article 101 of the Charter - should no longer be recruited. Lastly, a database should be developed that could be used not only by treaty monitoring bodies but also at all stages in the Centre's work, from the collection of information to the follow-up of cases and situations. That data base would be accessible to committees responsible for monitoring the application of covenants, working groups, experts and special rapporteurs. That would imply, however, putting an end to the confidential nature of certain procedures, such as that provided for in Economic and Social Council resolution 1503 (XLVIII). That sort of confidentiality was anachronistic and could be justified only in the few exceptional cases where discretion might be the key to the success of negotiations.

46. Mrs. GUZMAN (Latin American Federation of Associations of Relatives of Disappeared Detainees) impugned in advance any suggestion that her Federation was bent on artfully skewing the purpose of agenda item 11. The question under consideration, which concerned the functioning of various national, regional or international human rights bodies, was closely linked to the question of respect for those rights which arose in extremely down-to-earth terms for the non-governmental organizations. Ever since the international community had been taking a greater interest in human rights, institutions and bodies of all kinds had been created in many countries to protect them. Yet the mere creation of bodies was not enough; they had to be effective, and it was the non-governmental organizations that were in a position to inform the Commission about their functioning. In Colombia, for example, the Presidential Human Rights Council usually notified complainants that their case was being examined; as for the "guardian of the people" and "guardianship action" which had recently been introduced, they remained in limbo for want of a decree providing for their application. In Paraguay, the Government Procurator's Office had not yet taken into account the statements and testimony of victims of General Stroessner's dictatorship, and the public servants whose names were associated with specific offences were still

employed. In Mexico, the National Human Rights Commission, established on 6 June 1990, recorded complaints, undertook the necessary investigations and duly prepared reports, but its jurisdiction was limited since it did not take action at the sentencing stage and on substantive legal aspects. The independence of the judiciary should, of course, be respected but the serious shortcomings of the system, including delays in the administration of justice which had been condemned by a number of rapporteurs and experts, should not be overlooked.

47. General Assembly resolution 45/167, which had been mentioned by the Secretary-General in his report E/CN.4/1992/58, was interesting for two reasons, namely, it highlighted the complementarity of regional instruments and generally-accepted standards and encouraged contact between regional bodies and the United Nations. Her organization had for quite a long time maintained relations with the Inter-American Commission on Human Rights and appreciated its value, for it had not only originated the draft convention on involuntary disappearances that had been submitted to the General Assembly of the Organization of American States, but also indicated in a resolution that a law promulgated in Uruguay constituted a negation of the right to justice.

48. She deplored once again, just like the representatives of other non-governmental organizations, the fact that the Commission on Human Rights functioned only during the six weeks of its session and that its Chairman as well as its main officers possessed only symbolic functions. She hoped that national bodies for the promotion and protection of human rights would perform the tasks that had been entrusted to them, that States Members of the United Nations and regional organizations would take practical follow-up action on the commitments they had assumed under the agreements and covenants to which they were party, and that machinery would be created to ensure that the Commission's activities continued beyond its annual session.

49. Mr. ADOSSAMA (World Association for the School as an Instrument of Peace) said that the role of his Association, namely, instruction in human rights and peace, fell under the heading of education which was recognized in several instruments and above all in the Universal Declaration of Human Rights. Human rights teaching was a long-term process which began in primary school, continued throughout a child's education and should leave an imprint on his behaviour and mentality throughout his life.

50. First of all, such instruction must focus on the main texts adopted by the United Nations and UNESCO as well as on their application and the extent to which they could be applied. He wondered in that connection in how many States Members of the United Nations such instruction was provided and how many citizens in each of those countries were familiar with their rights, since no one was supposed to be ignorant of the law. For that reason, human rights instruction should be included in all curricula so that the younger generation could grow up in a spirit of mutual understanding and tolerance which were guarantees of peace. Human rights instruction should make future citizens aware not only of their rights but also of peaceful methods - such as dialogue and negotiation - of settling their disputes and putting an end to unjust situations in which they might find themselves.

51. In order to attain those objectives, his Association was trying to train trainers at the national and international levels, since the role played by teachers in the training of enlightened citizens and in apprenticeship for democracy had been demonstrated. In 1984, it had therefore founded the International Training Centre for Instruction in Human Rights and Peace, whose activities were aimed at teachers in all categories.

52. His Association recommended that the Commission should request that human rights teaching should be made official in all schools throughout the world in accordance with General Assembly resolution 217 (III) adopted on 10 December 1948, request ministers of education to allow their teachers to take human rights instruction courses through the International Training Centre for Instruction in Human Rights and Peace, and to ensure that the Voluntary Fund for Technical Cooperation in the Field of Human Rights was used to grant fellowships to interested teachers and staff members of national ministries of education.

53. Mrs. BLOCH (Minority Rights Group) condemned what might be called a somewhat passive attitude on the part of the United Nations, or rather of its States Members, who invoked the principle of non-interference in internal affairs for political reasons, forgetting that the Charter of the United Nations began with the words "We, the peoples of the United Nations". Her Group believed that human suffering had to be addressed no matter where it occurred and that, in the case of violent conflicts every effort should be made to establish a dialogue between all the parties if possible. The result of failure to establish a dialogue of that nature in time was that the United Nations was now facing a major challenge in trying to repair the consequences of the cold war between the super-Powers, namely, civil war, human suffering and refugees.

54. The new approach to human rights that should be adopted by the Commission demanded respect for human rights rather than the protection of violators for geopolitical reasons. Among the many conflicts brought about by super-Power rivalry that were being forgotten by the outside world were those that were continuing in Afghanistan and Somalia. In Somalia, the persecution of certain clans under General Barre and uncontrolled mass violence in the south since his overthrow, had resulted in thousands of deaths and hundreds of thousands of refugees and displaced persons. It faced an extremely precarious future since endemic conflict was continuing, and humanitarian aid was delayed or non-existent because of insecurity. The population faced famine, and the relatively stable northern region would shortly be unable to absorb the influx of refugees. United Nations action in Somalia had been unsuccessful because the Secretary-General needed the wholehearted support of the States members of the Commission on Human Rights and the Security Council to put maximum pressure on the parties to the conflict to reach a peaceful settlement. Yet the Charter provided the United Nations with moral and legal authority to prevent tyrants from hiding behind the word "sovereignty". Beyond a simple cease-fire there should be a clear framework and process for negotiation. Civilians must also be protected from clan militia, possibly by the creation of "corridors of tranquillity" policed by United Nations forces. Such corridors could be extended to provide a cross-country link, and used for the provision of emergency humanitarian aid.

55. In Afghanistan, where it was estimated that one million non-combatants had been killed and wounded, 250,000 persons disabled and 5 million had become refugees, the population yearned for a peaceful political settlement and there was an urgent need to make progress in that direction. The United Nations plan of October 1991 offered some elements for such a settlement, and the Secretary-General and States members of the Security Council should be encouraged to make implementation of the plan their highest priority. The conference bringing together representatives of the Kabul Government, the Mujahidin and other political groups must proceed. Other States, not previously involved in the conflict should offer their good offices and the States which had previously been involved should exert diplomatic and other forms of pressure on their allies and former allies to bring them to the conference table.

56. Both Afghanistan and Somalia consisted of minorities - ethnic minorities in Afghanistan and clan segmentation in Somalia. No political settlement was possible unless those minorities and the major political factions felt that they would have a fair share of power and resources. The Secretary-General's initiatives were commendable but the Commission on Human Rights should find new ways of resolving violent conflicts.

57. Mr. STROHAL (Austria), speaking in exercise of the right to reply, thanked all delegations and persons who had endorsed the idea of introducing the emergency intervention procedure proposed by his country. The observations and suggestions presented by a large number of delegations since the introduction of that proposal revealed the interest it had aroused. Informal consultations were continuing and Austria would submit to the Commission a new version of its proposal in which all the views expressed would be taken into account. He informed participants that his delegation had prepared a written text which was at their disposal.

58. Mr. ROA KOURI (Cuba), speaking in exercise of the right to reply, said that the statement made that very morning by Mr. Niehaus, Minister for Foreign Affairs of Costa Rica, revealed the extent to which he was unfamiliar with the entire Cuban participative system which was completely alien to him. In Cuba, the promotion of the dignity of man in every sense of the term had been the first and basic law of the Republic since the time of José Marti. The Cuban Government was a genuine Government of the people, by the people and for the people. Workers, peasants, students and intellectuals, and not representatives of élites or privileged minorities, participated in it from time to time on the basis of elections. In the sister Central American Republic, and despite its democratic tradition, a gulf separated those who had everything and those who had nothing. Such was not the case in Cuba. Cuba had a perception of democracy that was different from that of the Costa Rican Minister, who refused to admit that there could be forms of democracy and participation other than those with which he was familiar.

59. It was also inacceptable that Mr. Niehaus should have compared Cuba to Haiti, where a group of military men connected with Duvalier interests had overthrown the constitutional Government of President Aristide and was trying to remain in power by means of brutal repression which had sent thousands of Haitians fleeing by sea and where, since the beginning of the century, a military caste imposed by the United States was responsible for a reign of

terror. Mr. Niehaus had demonstrated reprehensible ignorance not only of the popular and democratic roots of the Cuban revolution, but also of Haiti's tragic history. He therefore resolutely rejected his statement.

60. He also deplored the Austrian representative's initiative in using his right of reply to express thanks for the support given to the idea of emergency intervention procedure, since in his view that initiative was misplaced.

61. Mr. SEZAKI (Japan), speaking in exercise of the right of reply, referring to the allegations made by the International Educational Development Inc. movement, said that the Japanese Government had admitted that the imperial Japanese army had participated in the events in question and that the Japanese Prime Minister had presented excuses and expressed the remorse of his country during his visit to the Republic of Korea in January. With respect to compensation for the persons in question, action had been brought to consider complaints by individuals. The Japanese Government was not yet in a position to say any more at the present stage.

62. The CHAIRMAN declared the general discussion on agenda item 11 closed.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS

(b) SITUATION OF HUMAN RIGHTS IN OCCUPIED KUWAIT (agenda item 12) (continued) (E/CN.4/1992/3, 4, 25, 26, 27 and Corr.1, 28 and Add.1, 29, 32, 34, 35, 36, 37, 60 (S/23212), 64 and 67; E/CN.4/1992/NGO/2, 5, 10, 13, 19 and 24; E/CN.4/1991/24, 27, 28, 29, 30, 31, 33 and Add.1, 34, 35 and 36; A/46/446, 529, 542, 544 and Corr.1, 606 and 647);

(c) SITUATION OF HUMAN RIGHTS IN VARIOUS COUNTRIES

63. The CHAIRMAN invited Mr. Kälin, Special Rapporteur on the situation of human rights in occupied Kuwait to introduce his report (E/CN.4/1992/26).

64. Mr.KÄLIN (Special Rapporteur on the situation of human rights in occupied Kuwait) said that he visited Kuwait twice, from 12 to 20 June 1991 and from 1 to 6 September; on both occasions he received complete cooperation from the Government of Kuwait which had allowed him to carry out his work with the fullest degree of independence. He had thus been able to interview a large number of persons reported to be victims or eyewitnesses of violations of civil and political rights committed by Iraqi occupying forces, and had witnessed some of the material destruction attributed to the Iraqi forces relevant to the assessment of alleged violations of economic, social and cultural rights of Kuwaiti citizens. He had prepared his report on the basis of information communicated to him at his request by the Kuwaiti Government, specialized agencies and intergovernmental and non-governmental organizations, as well as unsolicited information provided by the diplomatic community and communications submitted by the Government of Iraq to various United Nations bodies as well as relevant Iraqi legislation. He had sent advance copies of

his report to the Iraqi Government but it had not been possible to incorporate its observations in the final report; they were therefore available in a separate document (E/CN.4/1992/64). The Iraqi Government had not, however, provided information on the fate of persons still missing who had allegedly been arrested by Iraqi forces during the occupation of Kuwait. The report provided a detailed account of the situation as regards the civil and political, economic, social and cultural rights of persons in Kuwait during the invasion and occupation by Iraqi forces, as well as the methods he had used to evaluate the violations that had been committed. The last section, which contained his conclusions and recommendations, also took up certain questions concerning compensation of the victims of those violations and restitution of their property.

65. He had reached the conclusion that over 4,200 prisoners of war (in the sense of the Third Geneva Convention) as well as several thousand civilians, both Kuwaiti citizens and citizens of other Arab States, had been arrested and in many cases detained for long periods or even - in some cases - deported to Iraq. Such mass arrests had not been justified in most cases even from the military standpoint and, like the deportation of civilians, constituted a violation of the provisions of the Fourth Geneva Convention. In addition, citizens of OECD countries had been deported to Iraq where they had been used as human shields at strategic sites, and diplomatic and consular staff of several countries had been confined to the compounds of their embassies in violation of the basic principles of international law. Available information also revealed that torture had been used systematically and on a wide scale during the interrogation of those arrested throughout the occupation. It took various forms and was particularly brutal in the case of persons suspected of belonging to the Kuwaiti resistance and included electroshocks, burning, mutilation, mock executions and, for women in particular but also sometimes in the case of men, rape. With respect to the right to life, there was ample evidence of widespread arbitrary and summary executions. Generally speaking, the persons executed had not been tried or had been tried in summary fashion, and had therefore not had a fair trial in accordance with applicable standards. Many executions had been carried out in public or in front of families of the victims and dead bodies had been exposed in public in order to spread terror among the civilian population (paras. 244 and 245 of the report). The persons arrested and in some cases deported to Iraq included women but also children, some of whom witnessed traumatic events such as the arrest or disappearance of close relatives or the sight of executed persons lying in the street. The right to health of Kuwaitis had been seriously curtailed during the Iraqi occupation by a severe reduction of health-care services during that period and the closing, pillage or destruction of hospitals and laboratories and the departure of health professionals as a result of acts of intimidation by Iraqi occupying forces; that had resulted in a sharp increase in mortality in health-care institutions.

66. The problem of missing persons deserved special attention. Iraq had so far failed to provide any information about persons arrested and deported who had not yet been repatriated, and had not reported cases of death occurring in detention or of persons sentenced to death, as required by the Third and Fourth Geneva Conventions. He recommended that a case-by-case approach should be adopted to the problem of missing persons in cooperation with competent United Nations bodies, the International Committee of the Red Cross (ICRC) and

the Governments of Kuwait and Iraq. In that connection he welcomed the efforts of the Kuwaiti Government to re-examine its list of missing persons and hoped that the Iraqi Government would also contribute to the solution of the problem. Specifically, he urged that Government to provide information on all persons who had been arrested and deported between 2 August 1990 and 26 February 1991 and who were still missing, as well as on all other persons who had died in detention and who had been executed. He also urged the Iraqi Government to release all persons who were detained in Iraq and allow their repatriation and invited it to search, in a humanitarian spirit, for missing persons whose fate was unknown in cooperation with international humanitarian organizations such as ICRC. Lastly, he invited the Kuwaiti Government to take all appropriate steps and to cooperate with international organizations in identifying the corpses of all persons killed in Kuwait in order to clarify cases of missing persons for their relatives.

67. With regard to compensation, he said he had received large numbers of claims for compensation either for material damages or personal injuries which he had transmitted to the Compensation Commission established under Security Council resolution 687 (1991) on 3 April 1991. In that regard he welcomed the decision taken on 18 October 1991 by the Governing Council of the United Nations Compensation Commission (S/AC.26/1991/3) to compensate victims of human rights violations for personal injury as well as for serious mental pain and anguish. He also urged United Nations bodies and other intergovernmental organizations to consider means of presenting the claims of persons who were stateless or without the effective diplomatic protection of a State, namely, Palestinians. In that connection he expressed the hope that the decision recently adopted by the Governing Council of the Compensation Commission (S/AC.26/1991/5) to the effect that an appropriate person, in cooperation with international bodies such as UNHCR, UNRWA and ICRC, should be entrusted with the task of ensuring that such persons were compensated.

68. The CHAIRMAN invited Mr. Rivas Posada, Special Representative of the Commission responsible for studying the human rights situation in Cuba, to introduce his report (E/CN.4/1992/27).

69. Mr. RIVAS POSADA (Special Representative of the Commission responsible for studying the human rights situation in Cuba) said that the task entrusted to him was described in resolution 1991/68 adopted by the Commission on Human Rights on 6 March 1991. After having been officially appointed by the Secretary-General to perform that task, he had on 30 July 1991 sent a letter to the Cuban Government informing it of his mission and requesting it to provide him with all necessary cooperation in the fulfilment of his mandate. As that letter had remained unanswered, he had on 2 December 1991 sent a further communication to the Cuban Government, once again requesting its cooperation and authorization to visit Cuba; he had subsequently transmitted to it a list of persons who, according to information received, might have been victims of human rights violations. As none of those communications had been answered, he had been unable to establish direct contact with the Cuban authorities and receive information from them.

70. He explained that resolution 1991/68, which described his mandate, had been adopted as a result of a process initiated by the Commission at its forty-fourth session, when it had instructed its Chairman and five of its

members to visit Cuba in order to observe the human rights situation; the various stages of that process were described in detail in paragraphs 8-14 of his report. Under that resolution, his task consisted essentially of maintaining direct contact with the Cuban Government and establishing direct contact with "citizens of Cuba". Since it had been impossible to do so because he had been unable to visit Cuba, he had decided to collect information from Cuban citizens living outside their country, either directly or through representative organizations. The information included in the report therefore comprised such information as well as that which Cubans had sent from Cuba itself.

71. He regretted the fact that his work had of necessity been confined to the compilation of information presented in that way without being able to determine whether the allegations made were justified, since the complete absence of information from Government sources had made it impossible to compare the complaints submitted to him with the version of the Cuban authorities and to evaluate them on the basis of a more comprehensive knowledge of the facts. He had nevertheless considered that those allegations should be brought to the attention of the international community in an objective way and unaccompanied by any value judgements. As indicated in paragraph 26 of the report, some of the individual cases involving such complaints might well have been clarified by the Cuban Government in its replies transmitted to the Sub-Commission in accordance with the confidential procedure; for that reason, any such replies could not be made public. He emphasized in that connection that the Cuban Government had so far duly replied to communications that the Centre for Human Rights transmitted to it under that procedure.

72. The information he had received revealed that there had been a considerable decline in the number of allegations concerning the right freely to enter and leave the country compared with the number of complaints recorded by the Working Group that had visited Cuba in 1988 and mentioned in its report (E/CN.4/1989/46). Most of the allegations made during the previous two years concerned disappearances arising out of failed attempts to flee the country in conditions that put the lives of the emigrants at risk. The authorities now granted exit permits more easily but the conditions in which the voyage was undertaken were often extremely hazardous. On the other hand, the number of complaints concerning the alleged persecution of dissidents and opponents of the regime had increased considerably, as had communications indicating that detainees and in particular political prisoners, namely, those who were regarded as enemies of the regime, had been subjected to ill-treatment. Moreover, the human rights situation in Cuba should be viewed from the standpoint of the country's difficult economic situation because, as indicated in paragraph 30 of the report, all the efforts made by the Cuban Government to improve the exercise of economic, social and cultural rights had been seriously jeopardized by the political and economic changes which had taken place on the international level and which had forced it to modify its relations with the countries with which it maintained close political economic and trade links. The result had been a serious deterioration of the Cuban economy to which the authorities had reacted by intensifying the repression of alleged opponents of the regime. That had in 1991 given rise to the creation of "flying squads" responsible for forestalling any attempt at public protest, to which was attributed responsibility for the "acts of repudiation" which

were tolerated by the authorities and during which dissidents and alleged militants were harassed, insulted and aggressed. It had been during a demonstration of that nature that the house of the writer María Elena Cruz Varela, accused of "unlawful association" and sentenced to two years' imprisonment, had been attacked. That incident and other abuses reported by the press, such as the recent sentencing to death of persons who had tried to leave the country illegally - police officers having been killed during their attempt to do so - revealed that freedom of expression, of participation in political life and association were considerably restricted in Cuba.

73. In conclusion, he expressed the hope that the Commission and other competent United Nations bodies would be able in future to get the Cuban Government to cooperate in order to clarify the cases and questions he had mentioned. For the Commission's task was not to denounce or condemn countries but rather to help them respect human rights; without their cooperation it would be unable to perform its task properly.